

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:FS:MAN:POSTF-155716-01  
RLPeacock

date:

to: Henry Singleton, Territory Manager  
Large and Mid-Size Business Division (Financial Services)  
Attention: Mark Weinberg, Team Manager

from: Area Counsel (Financial Services) (Area 1: Manhattan)

subject:

Taxable years [REDACTED] through [REDACTED]

STATUTE OF LIMITATIONS EXPIRES: DECEMBER 31, [REDACTED]

UIL Nos. 6229.00-00  
6229.02-00  
6231.07-00

DISCLOSURE STATEMENT

This advice may constitute return information subject to I.R.C. § 6103. This advice may contain confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination, Appeals, or Counsel recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or Counsel or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the Field Office with jurisdiction over the case.

INTRODUCTION

This memorandum is in response to your request for advice in the above-captioned matter. Specifically, you have asked our office to review several Forms 872-P (Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership) ("Form 872-P") executed for [REDACTED] (" [REDACTED] ") for the taxable years ending December 31, [REDACTED] through December 31, [REDACTED], to determine if the Forms 872-P are valid.

ISSUE

1. Are the Forms 872-P for [REDACTED] for the taxable years ending December 31, [REDACTED] through December 31, [REDACTED], valid?
2. Is the signature of [REDACTED], as the parent of the tax matters partners, required on the Forms 872-P for the taxable years ending December 31, [REDACTED] through December 31, [REDACTED]?

BACKGROUND

This opinion is based upon the facts set forth herein. It may change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon. You should be aware that, under routing procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office, which should be in approximately 10 days. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

For the taxable years ending December 31, [REDACTED] through December 31, [REDACTED], [REDACTED] (" [REDACTED] ") (EIN [REDACTED]) filed Forms 1065 U.S. Partnership Return of Income ("Form 1065"). Each of the Forms 1065 filed by [REDACTED] was signed by [REDACTED] (" [REDACTED] ").

On its Forms 1065 for the taxable years ending December 31, [REDACTED] through December 31, [REDACTED], [REDACTED] designated [REDACTED] (" [REDACTED] ") as its tax matters partner ("TMP"). [REDACTED] is a New York limited liability corporation created on [REDACTED]. It is still in existence.

On its Forms 1065 for the taxable years ending December 31, [REDACTED] through December 31, [REDACTED], [REDACTED] designated [REDACTED] (" [REDACTED] ") as its TMP. [REDACTED] is a New York limited liability corporation created on [REDACTED]. It is still in existence.

[REDACTED] signed each of the Forms 1065 in his capacity as the president of [REDACTED] (for [REDACTED] through [REDACTED]) and [REDACTED] (for [REDACTED] through [REDACTED]), the designated TMPs for the years indicated.

At all relevant times, [REDACTED] and [REDACTED] were wholly-owned subsidiaries of [REDACTED] (" [REDACTED] "). [REDACTED] was a subsidiary of [REDACTED] (" [REDACTED] "). From [REDACTED] through [REDACTED], [REDACTED] filed consolidated income tax returns for its consolidated group.

In [REDACTED], [REDACTED] acquired land located in the United Kingdom, and in [REDACTED], it began construction on a building for its London operations. This property is known as [REDACTED]. On [REDACTED], [REDACTED] agreed to lease [REDACTED] to [REDACTED] for [REDACTED] years.

According to the revenue agent, [REDACTED] created [REDACTED] in [REDACTED] for United Kingdom tax purposes. While there was no merger or consolidation of [REDACTED] and [REDACTED], the taxpayer has indicated that [REDACTED] essentially took over the operations of [REDACTED] in [REDACTED]. On [REDACTED], [REDACTED] assigned all of its interests in [REDACTED] to [REDACTED].

[REDACTED] and [REDACTED] (" [REDACTED] "), a United Kingdom corporation, were the general partners of [REDACTED] during [REDACTED]. [REDACTED] and [REDACTED] were the general partners of [REDACTED] during [REDACTED]. [REDACTED] and [REDACTED] were the general partners of [REDACTED] from [REDACTED] through [REDACTED].

[REDACTED], [REDACTED], and [REDACTED] owned [REDACTED] during [REDACTED] through [REDACTED] as follows:

Partner	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] %	[REDACTED] %	[REDACTED] %
[REDACTED]	[REDACTED] %	[REDACTED] %	[REDACTED] %
[REDACTED]	[REDACTED] %	[REDACTED] %	[REDACTED] %
Total	[REDACTED] %	[REDACTED] %	[REDACTED] %

██████████ and ██████████ owned ██████████ during  
 ██████████ through ██████████ as follows:

Partner	██████████	██████████	██████████	██████████
	██████████ %	██████████ %	██████████ %	██████████ %
	██████████ %	██████████ %	██████████ %	██████████ %
Total	██████████ %	██████████ %	██████████ %	██████████ %

██████████ executed the following Forms 872-P for ██████████  
 ██████████.

<u>Taxable Years</u>	<u>Person who Executed</u>	<u>Date Executed by Taxpayer</u>	<u>Date executed by IRS</u>	<u>Statute Extended Through</u>
██████████	██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████	██████████

██████████ executed the following Forms 872-P for ██████████  
 ██████████.

<u>Taxable Years</u>	<u>Person who Executed</u>	<u>Date Executed by Taxpayer</u>	<u>Date executed by IRS</u>	<u>Statute Extended Through</u>
██████████	██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████	██████████

On each of the Forms 872-P, either ██████████ or ██████████ is typed or handwritten in the space provided for the "Tax Matters Partner's" signature. In addition, ██████████'s signature is on all of the Forms 872-P in the space provided for the "Authorized Person's" signature.

██████████ was the president of both ██████████ and ██████████ at the time he executed the Forms 872-P. The taxpayer provided the revenue agent with a handwritten memorandum from ██████████ ("██████████"), the former Vice President of ██████████, in which ██████████ forwarded the Forms 872-P to ██████████ for signature because "it is my understanding he is the president of both ██████████ / ██████████."

The taxpayer also provided the revenue agent with a letter from ██████████ dated ██████████, which reads, in part,

I am attesting that in connection with the Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership (Form 872-P) for [REDACTED] for the periods ending December 31, [REDACTED], December 31, [REDACTED] and December 31, [REDACTED] with [REDACTED] listed as the Tax Matters Partner, [REDACTED] is authorized to sign for the Tax Matters Partner.

The taxpayer also provided the revenue agent with a letter from [REDACTED], [REDACTED]'s successor, dated [REDACTED], which reads, in part,

I am attesting that in connection with the Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership (Form 872-P) for [REDACTED] for the periods ending December 31, [REDACTED], December 31, [REDACTED] and December 31, [REDACTED] with [REDACTED] listed as the Tax Matters Partner, [REDACTED] is authorized to sign for the Tax Matters Partner. In addition, I am attesting that in connection with the Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership (Form 872-P) for [REDACTED] for the periods ending December 31, [REDACTED], December 31, [REDACTED] and December 31, [REDACTED] with [REDACTED] listed as the Tax Matters Partner, [REDACTED] is authorized to sign for the Tax Matters Partner.

[REDACTED] is operated pursuant to a Joint Ownership Deed. The Joint Ownership Deed does not address the authority of [REDACTED] or any other individual to act on behalf of [REDACTED].

Throughout the audit, representatives of [REDACTED] have continually represented to the revenue agent that [REDACTED] is the correct person to execute the Forms 872-P.

We must now determine whether the above-referenced Forms 872-P are valid for each of the years at issue.

DISCUSSION:Issue 1

Generally, the IRS must assess tax against a taxpayer within 3 years from the date the taxpayer files his or her tax return. I.R.C. § 6501(a). The taxpayer and the IRS may consent in writing to extend the period of limitations on assessment. I.R.C. § 6501(c)(4).

The general rule of section 6501 does not apply, however, to income tax attributable to partnership items for partnerships subject to the unified audit procedures of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). Instead, for TEFRA partnerships, the statute of limitations on assessment of tax attributable to partnership items expires three years from the date the partnership tax return is filed, or the date the partnership tax return is due, whichever is later. I.R.C. § 6229(a).

Each partner may individually enter into an agreement with the IRS to extend the statute of limitations on assessment. I.R.C. § 6229(b)(1)(A). Alternatively, the IRS and the TMP, or any other person authorized in writing by the partnership, may enter into an agreement to extend the statute of limitations on assessment with respect to all of the partners. I.R.C. § 6229(b)(1)(B).

A TMP is the general partner designated as the TMP as provided in the regulations. I.R.C. § 6231(a)(7)(A). If the partnership has not designated a TMP, the TMP is the general partner with the largest profits interest in the partnership at the end of the taxable year at issue. I.R.C. § 6231(a)(7)(B). Section 6231(a)(7) permits the IRS to select the TMP if the partnership has not designated the TMP in accordance with subparagraph (A), and if the IRS determines that it is "impracticable" to apply the largest profits interest test set forth in subparagraph (B). I.R.C. § 6231(a)(7).

The regulations provide that a partnership may designate as its TMP any person who "(i) Was a general partner in the partnership at some time during the taxable year for which the designation is made; or (ii) Is a general partner in the partnership as of the time the designation is made." Treas. Reg. § 301.6231(a)(7)-1(b)(1).

A partnership may not designate a foreign person as its TMP if there is a United States person who may serve as the TMP, unless the Commissioner consents to the designation of the foreign TMP. Treas. Reg. § 301.6231(a)(7)-1(b)(2).

A partnership may designate its TMP on its partnership return. Treas. Reg. § 301.6231(a)(7)-1(c).

The Code and the regulations require that the TMP be a general partner, because, "[a] general partner is generally in a position to know the details of the partnership's financial affairs, and, if he does not know, he generally has the right to demand an accounting. Moreover, a general partner's actions generally bind a partnership and its partners." PAE Enterprises v. Commissioner, T.C. Memo. 1988-222.

Temp. Treas. Reg. § 301.6229(b)-1T (enacted March 5, 1987), provides the procedure for a partnership to authorize a person other than the TMP to extend the statute of limitations on assessment in accordance with I.R.C. § 6229(b)(1)(B). Temp. Treas. Reg. § 301.6229(b)-1T provides,

Any partnership may authorize any person to extend the period described in section 6229(a) with respect to all partners by filing a statement to that effect with the service center with which the partnership return is filed. The statement shall:

- (a) Provide that it is an authorization for a person other than the tax matters partner to extend the assessment period with respect to all partners,
- (b) Identify the partnership and the person being authorized by name, address, and taxpayer identification number,
- (c) Specify the partnership taxable year or years for which the authorization is effective, and
- (d) Be signed by all persons who were general partners at any time during the year or years for which the authorization is effective.

A single Form 872-P which includes several years will be construed as a separate waiver of the statute of limitations for each year. See Revere Copper & Brass, Inc. v. United States, 77 Ct. Cl. 456 (1993). Therefore, although [REDACTED] and [REDACTED] executed collective Forms 872-P encompassing several years, we

will evaluate the validity of the Forms 872-P on a year-by-year basis.

A consent is valid on its face if it includes the taxpayer's name, the taxpayer's signature or the signature of a person authorized to sign for the taxpayer, the taxable year involved, and was signed before the expiration of the statute of limitations. Lefebvre v. Commissioner, T.C. Memo. 1984-202, aff'd, 758 F.2d 1340 (9th Cir. 1985). Here the issue is whether [REDACTED], [REDACTED] and/or [REDACTED] were authorized to sign the consents on behalf of [REDACTED] for the taxable years at issue.

[REDACTED] and [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED]

[REDACTED] the theory of estoppel. In order to prevail on this theory,



(1) there must be false representation or wrongful misleading silence; (2) the error must originate in a statement of fact, not in opinion or a statement of law; (3) the one claiming the benefits of estoppel must not know the true facts; and (4) that same person must be adversely affected by the acts or statements of the one against whom estoppel is claimed.

LeFebvre v. Commissioner, T.C. Memo. 1984-202, aff'd, 758 F.2d 1340 (9th Cir. 1985) (citing Lignos v. United States, 439 F.2d 1365 (2d Cir. 1971)).

In Illinois Addressograph Manuf. Co. v. Commissioner, 31 B.T.A. 498 (1934), the Court prohibited the taxpayer from denying the validity of a Form 872 on the grounds of estoppel. The taxpayer, Illinois Addressograph Manufacturing Company, an Illinois corporation, signed several Forms 872 for the taxable years 1924 and 1925 in the name of "Addressograph Manufacturing Company." Id. "Addressograph Manufacturing Company" was a Delaware corporation created in 1927 that purchased a majority of the Illinois corporation's assets. Id. The Forms 872 were signed by F.N. Harvey, an assistant treasurer of the Illinois corporation for 1924, 1925, 1929 and 1930, and an assistant treasurer of the Delaware corporation for 1929 and 1930. Id. The Court upheld the validity of the Forms 872, explaining,

The Delaware corporation was not organized until 1927, and had no tax liability to adjust or pay for 1924 and 1925, the years involved here. Harvey, who signed the [Illinois corporation's] return for 1925 as assistant treasurer and who occupied the same position with the Delaware corporation, is charged with knowledge of this fact. If it were Harvey's intention to furnish the respondent 1924 and 1925 waivers of the Delaware corporation, instead of [the Illinois corporation], it would, indeed, be difficult to conclude that the transaction was free from fraud.

Id.

(b)(7)a

(b)(7)a

(b)(7)a

(b)(7)a

(b)(7)a

(b)(7)a

To be valid, a Form 872, need not be executed perfectly. See Pleasanton Gravel Co. v. Commissioner, 85 T.C. 839 (1985) (waiver extending time to assess tax is valid on its face since failure to include name of the taxpayer corporation with signature of its president constituted a mere clerical error); see also Three G Trading Corp. v. Commissioner, T.C. Memo. 1988-131 (waiver extending time to assess tax valid on its face despite being executed by officer in his individual capacity rather than as a representative of the corporation).

Furthermore, although a consent extending the time to assess taxes is not a contract, contract principles are significant because section 6229(b)(1)(B) requires that the parties reach a written agreement concerning any extension. The term "agreement" means a manifestation of mutual assent. Piarulle v. Commissioner, 80 T.C. 1035, 1042 (1983), acq., 1984-2 C.B. 2. It is the objective manifestation of mutual assent as evidenced by the parties' conduct that determines whether they have made an agreement. Kronish v. Commissioner, 90 T.C. 684 (1988).

(b)(7)a

(b)(7)a

(b)(7)a

Where a written agreement does not conform with the actual agreement of the parties, a court may reform the writing to conform to the parties' intentions. Reformation is an equitable remedy used to reframe written contracts to reflect the actual agreement between the parties when, because of mutual mistake, the writing does not embody the contract as actually made. Reformation is allowed whenever there is a mistake in drafting. See Woods v. Commissioner, 92 T.C. 776 (1989).

(b)(7)a

(b)(7)a

(b)(7)a



(b)(7)a



(b)(7)a

(b)(7)a



In addition to the terms of the partnership agreement and governing state law, Temp. Treas. Reg. § 301.6229(b)-1T, enacted March 5, 1987, provides that a partnership may designate an individual to extend the period of limitations on its behalf by submitting a statement with certain required information to the service center where the partnership files its tax return. The courts have, however, interpreted the requirement of this written statement pursuant to Temp. Treas. Reg. § 301.6229(b)-1T as permissive, not mandatory. See Cambridge Research, 97 T.C. at 295.

(b)(7)a



(b)(7)a

(b)(7)a, the Tax Court has held that a consent signed by an individual who has represented the taxpayer before the IRS is valid on its face. See Doyle v. Commissioner, T.C. Memo. 1997-396, aff'd without opinion, 202 F.3d 253 (3d Cir. 1999) (noting that, where an individual represented the taxpayer before the IRS, the IRS did not have "a duty to look beyond the consent to ascertain whether [the signor] was indeed the TMP or otherwise authorized to act for the partnership."); Amesbury Apartments, Ltd. v. Commissioner, 95 T.C. 227 (1990) (explaining that an individual was authorized in writing to extend the statute of limitations where the individual executed the consent pursuant to a valid power of attorney).

(b)(7)a

(b)(7)a

Based on the foregoing, each of the Forms 872-P for the taxable years [REDACTED] and [REDACTED] are valid.

[REDACTED] executed several Forms 872-P on behalf of [REDACTED], extending the statute of limitations through December 31, [REDACTED]. On October 26, 2000, [REDACTED] executed a Form 872-P on behalf of [REDACTED], extending the statute of limitations through December 31, [REDACTED]. In addition, [REDACTED] signed all of the Forms 872-P for [REDACTED] on the line marked "Authorized Person Sign Here."

The taxpayer designated [REDACTED] as its TMP on its Form 1065 for [REDACTED], pursuant to Treas. Reg. § 301.6231(a)(7)-1(c). (b)(7)a

(b)(7)a

(b)(7)a

(b)(7)a

(b)(7)a

(b)(7)a

(b)(7)a

(b)(7)a

(b)(7)a

A small rectangular black box redacting a line of text.

(b)(7)a

A large rectangular black box redacting the majority of the page content, starting below the first redaction and extending to the bottom of the page.

Based on the foregoing, each of the Forms 872-P for the taxable year [REDACTED] appear to be valid.

[REDACTED] through [REDACTED]

On its [REDACTED] through [REDACTED] Forms 1065, [REDACTED] designated [REDACTED] as its TMP, pursuant to Treas. Reg. § 301.6231(a)(7)-1(c). [REDACTED] was a general partner in [REDACTED] from [REDACTED] through [REDACTED], owning a [REDACTED]% interest throughout. Accordingly, [REDACTED], as the TMP of [REDACTED], properly executed Forms 872-P on behalf of [REDACTED] extending the statute of limitations on collection through December 31, [REDACTED].

Based on the foregoing, each of the Forms 872-P for the taxable years [REDACTED] through [REDACTED] are valid..

## Issue 2

The second issue is whether, in addition to the signatures of [REDACTED] and [REDACTED] as the TMPs of [REDACTED], the signature of [REDACTED] as the parent of [REDACTED] and [REDACTED] is required on the Forms 872-P for the taxable years ending December 31, [REDACTED] through December 31, [REDACTED].

From [REDACTED] to [REDACTED], [REDACTED] was the parent of [REDACTED]. From [REDACTED] through [REDACTED], [REDACTED] was the parent of [REDACTED]. None of the Forms 872-P at issue were signed by [REDACTED], as the parent of [REDACTED] or [REDACTED]. Instead, the Forms 872-P are signed solely by [REDACTED] or [REDACTED].

The consolidated return regulations generally provide that the common parent of a consolidated group is the sole agent with the authority to act on behalf of its subsidiaries. See Treas. Reg. § 1.1502-77. Here, the Forms 872-P were signed by [REDACTED] and [REDACTED]. The Forms 872-P did not contain an additional signature from [REDACTED]. We nevertheless believe the consents are valid on their face to extend the statutes of limitation for [REDACTED].

Even if a TMP is a subsidiary in a consolidated group, the TMP has rights and responsibilities towards the partners of the partnership which are separate and apart from the TMP's role as a subsidiary in a consolidated group. Nothing in the consolidated return regulations prevents a subsidiary from functioning as a TMP in a TEFRA partnership. Therefore, a subsidiary can be a TMP independent of the requirements imposed by the consolidated return regulations.

Although it may provide an additional safeguard by requiring the signature of [REDACTED], as the parent of [REDACTED] and [REDACTED], we do not believe it would be appropriate in this case, where [REDACTED] and [REDACTED] have already executed numerous Forms 872-P without the signature of [REDACTED].

If you have any questions, please contact Robin L. Peacock at (212) 436-1335.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL  
Area Counsel, LMSB  
(Financial Services)

By: \_\_\_\_\_  
PETER J. LABELLE  
Associate Area Counsel